STATE OF NEW YORK

1769

2019-2020 Regular Sessions

IN SENATE

January 16, 2019

Introduced by Sen. SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law, in relation to mercantile establishments and the defense of lawful detention

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 218 of the general business law, as amended by chapter 374 of the laws of 1994, is amended to read as follows:

§ 218. **1.** Defense of lawful detention. In any action for false arrest, false imprisonment, unlawful detention, defamation of character, assault, trespass, or invasion of civil rights, brought by any person by reason of having been detained on or in the immediate vicinity of the premises of (a) a retail mercantile establishment for the purpose of investigation or questioning as to criminal possession of an anti-security item as defined in section 170.47 of the penal law or as to the ownership of any merchandise, or (b) a motion picture theater for the purposes of investigation or questioning as to the unauthorized operation of a recording device in a motion picture theater, it shall be a defense to such action that the person was detained in a reasonable manner and for not more than a reasonable time to permit such investigation or questioning by a peace officer acting pursuant to his **or her** special duties, police officer or by the owner of the retail mercantile establishment or motion picture theater, his **or her** authorized employee or agent, and that such officer, owner, employee or agent had reasonable grounds to believe that the person so detained was guilty of criminal possession of an anti-security item as defined in section 170.47 of the penal law or was committing or attempting to commit larceny on such premises of such merchandise or was engaged in the unauthorized operation of a recording device in a motion picture theater.

2. As used in this section, "reasonable grounds" shall include, but not be limited to, knowledge that a person [~~(i)~~] **(a)** has concealed

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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possession of unpurchased merchandise of a retail mercantile establishment, or [~~(ii)~~] **(b)** has possession of an item designed for the purpose of overcoming detection of security markings attachments placed on merchandise offered for sale at such an establishment, or [~~(iii)~~] **(c)** has possession of a recording device in a theater in which a motion picture is being exhibited [~~and a~~]**.**

3. A "reasonable time" shall mean the time necessary**, not to exceed one hour, except for extraordinary circumstances,** to permit the person detained to make a statement or to refuse to make a statement[~~,~~] and the time necessary to examine employees and records of the mercantile establishment relative to the ownership of the merchandise, or possession of such an item or device.

4. The release from detention shall not be conditioned upon any requirement that, the person detained pursuant to subdivision one of this section, or his or her parent or legal guardian, sign any documents, statements, or agreements to pay damages. Any documents presented shall not contain any message stating that such document or statement is being signed voluntarily and without coercion. Any person detained, or his or her parent or legal guardian, who signs any statement or documents, shall, upon release, be provided with copies of such statements or documents so signed. A minor, under the age of eighteen, detained pursuant to this section, should immediately be afforded the ability to contact his or her parents or legal guardian.

5. Such detention at such vicinity shall not authorize the taking of such person's fingerprints at such vicinity unless the taking of fingerprints is otherwise authorized by section 160.10 of the criminal procedure law and are taken by the arresting or other appropriate police officer or agency described therein in accordance with section 140.20 or 140.27 of such law. Whenever fingerprints are taken, the requirements of article one hundred sixty of the criminal procedure law shall apply as if fully set forth herein.

§ 2. This act shall take effect immediately.